

June 13, 2014

VIA ECF

Honorable Judge Kimba M. Wood
United States District Judge
United States Courthouse
500 Pearl Street, Room 15B
New York, New York 10007

Re: *Gulino, et al. v. Board of Education*, 96-CV-08414 (KMW)

Dear Judge Wood:

Plaintiffs and Defendant Board of Education of the City School District of the City of New York ("BOE") jointly submit this letter to request the Court's assistance in enforcing subpoenas issued to the New York State Education Department ("SED") and NCS Pearson, Inc. ("Pearson") on May 14, 2014.

As we advised the Court in the parties' June 9, 2014 joint status letter filed with the Court, Dr. James Outtz, the Court-appointed test validation expert, requested certain documents and information for his analysis of the LAST-2 that were not in the parties' possession. Specifically, Dr. Outtz requested passage rates for the other examinations required for New York State teacher certification from 2004 to the present (the Elementary ATS-W, the Secondary ATS-W and the Content Specialty Tests) including the test-takers' social security number, as well as copies of those tests that would be representative of each examination as it has been administered during that time frame. Plaintiffs issued subpoenas to SED and Pearson for this information and documents on May 14, 2014, and informed counsel for SED and Pearson that the subpoenas sought documents requested by Dr. Outtz.

As agreed by the parties, on May 28, 2014, SED and Pearson served written responses to the subpoenas, objecting to producing any documents or information on a number of grounds, including that the requests are "outside the scope of the assignment given to Dr. Outtz by the Court". SED also objected on the grounds that the subpoena seeks "highly confidential and sensitive personally identifiable information" even though, at SED's request, a revised confidentiality order was recently entered in this action. On June 4, 2014, the parties held a meet-and-confer session with SED and Pearson. On June 6, 2014, SED advised the parties that it would produce pass rate data broken down by available ethnicity information, identifying: (1) the number of people who took the exam; (2) how many times they took the exam; and (3) how many of those people passed each examination. SED, however, is maintaining its objection to disclosing the other information and documents requested by Dr. Outtz, including personally identifiable information concerning the test-takers.

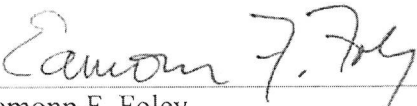
On June 10, 2014 counsel for Plaintiff and BOE spoke with Dr. Outtz and advised him that SED and Pearson had objected to producing the documents he sought. Dr. Outtz reiterated

his need for the documents and information requested in the subpoenas in order to conduct his analysis of the LAST-2.

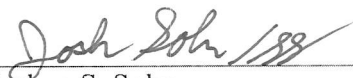
Accordingly, the parties jointly request the Court's assistance with resolving this issue. Plaintiffs request that the Court issue an order or otherwise grant such relief to enforce the subpoenas and require SED and/or Pearson to produce the documents and information Dr. Outtz requested. While defendant agrees that an order directing the production ultimately may be required here, defendant believes that the Court's facilitation of a discussion between Dr. Outtz, SED, and Pearson may procure a mutually-agreeable result consistent with Dr. Outtz's task of reviewing the validation of the LAST-2. Plaintiffs do not believe that such a discussion will be productive and will only serve to further delay resolution of this issue given that SED and Pearson have already refused to compromise or produce any of the documents sought in the subpoenas while Dr. Outtz maintains his need for the requested documents and information for his analysis.

Copies of the subpoenas and responses are enclosed. The parties are available to the Court should Your Honor have any questions.

Respectfully submitted,


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Enclosure

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